IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 901 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UKABHAI NARSIBHAI SUVAGIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 901 of 2002

MR ASHISH M DAGLI for Petitioner No. 1

MR BD DESAI, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/11/2003

ORAL JUDGEMENT

1. The petitioner is the owner of tractor bearing Registration No. GJ-4-H-7795 and trailor No.

GJ-4-U-426, which are taken into custody by the police in connection with offence registered at C.R. No. I-20 of 2002 of Liliya Police Station. The said offence has been registered against three persons, namely Ghusabhai Limbabhai, Kalubhai Limbabhai and Patel Gordhanbhai Limbabhai, who are alleged to have assaulted one Bharatbhai Takhubhai, his father Takhubhai Hamirbhai and his relative Devkubhai Nankubhai and Gbhrubhai Jinabhai on 21/6/2002. It is alleged that at the time of commission of the offence Gordhanbhai Limbabhai was driving he tractor and he has knocked down father of Bharatbhai, namely Takhubhai and had run the tractor over him causing fracture of his two legs. Thereafter, said Gordhanbhai had also caused injuries to brother of Bharatbhai, namely Devkubhai Nankubhai with the said tractor. It is also alleged against those three persons that they had committed offences of murder by causing death of two persons, namely father and brother of Bharatbhai by inflicting fatal injuries on them by means of an axe. In the course of the investigation, the tractor and trailor in question came to be attached by the police since there were some blood stains detected on the grill of the radiator and also on the ground that it was used as a weapon for causing injuries to the deceased.

1.1. It is stated by Mr. A.M. Dagli, learned advocate appearing for the petitioner that the investigation is over, the charge-sheet is submitted and original accused have already been released on bail pending their trial before the Court of Sessions.

1.2. The petitioner, who is the owner of the tractor as well as trolley attached to it, submitted application before the Court of the Ld. Judicial Magistrate First Class at Liliya under the provisions of section 451 of the Code of Criminal Procedure (for short 'the Code') on 22/7/2002 seeking possession of the tractor alongwith the trolley. However, the said application was rejected by the Ld. Magistrate vide order dated 9/8/2002.

1.3. Against the said order, the petitioner preferred Criminal Revision Application No. 80 of 2002 under the provisions of section 397 of the Code in the Court of Sessions at Amreli. The said Revision Application has been rejected by the Ld. Extra Assistant Judge, Amreli vide order dated 19/9/2002. In this petition the orders passed by Courts below have been challenged.

2. Mr. Dagli has submitted that during investigation Panchnama has been drawn with regard to seizure of the tractor and trailor which contains the details regarding blood stains detected on the grill of the radiator and that can be utilized as evidence for the prosecution. He has further submitted that if the grill can be removed and placed in the custody of the police or in the custody of the Court, the purpose of prosecution will adequately be served and for that reason the tractor alongwith the trailor cannot be detained as it would cause him financial loss, he being an agriculturist.

2.1. As against that, Mr. B.D. Desai, Ld. APP appearing for the respondent - State has submitted that since the tractor itself was used as a weapon in commission of the offence, the custody of the same may not be handed over to the petitioner as that may destroy crucial evidence which would adversely affect the prosecution case. According to him, when the discretion has been used by the Courts below in favour of not releasing the vehicle, in a petition under Article 226/227 of the Constitution this Court may not interfere.

3. Having gone through the record of the petition, it appears that initially for committing offence the aforesaid three accused had used the tractor to knock down father of the original complainant and also his brother by deliberately colliding it with them. But thereafter, the victims have been assaulted with the means of deadly weapons by those accused. It also appears that the grill of the radiator is blood stained. These two factors have weighed with the Courts below in turning down the request of the petitioner. However, the Courts below have completely overlooked two material aspects, namely that the petitioner himself is not an accused of this case and it is his tractor and trolley which had been taken by the original accused and they had committed the crime without the knowledge of the petitioner. Secondly that when the grill of the radiator can be separated from the tractor and its custody is kept either with the police or with the trial Court, at the time of the trial there will not be any difficulty for the prosecution witnesses to identify the same or proving the presence of blood on it. Further that the panchnama during the course of investigation has already been drawn by the concerned officer, which also contains detailed description of the tractor and trolley. One more aspect is that so far the tractor and the trolley are concerned, if they are allowed to lie idle at the police station completely unattended, such costly items would be rendered useless within no time. The petitioner cannot

be rendered to such situation where ultimately when the tractor is handed over to him, it cannot be of any use to him except to sell it in a scrap. It is, therefore, in the fitness of things that the petitioner can be allowed to make use of them and at the same time their safety can be ensured by imposing certain conditions and production of it can also be secured at the time of trial. The following conditions can therefore, take care of such situation :-

i. That the petitioner shall not part with the possession of the tractor as well as the trolley by sale, mortgage or in any other manner.

ii. That the petitioner will produce the tractor and the trolley as and when required by the police.

iii. That except for the usual maintenance, no alteration will be made by him either in the tractor or in the trolley.

iv. That he will produce the tractor alongwith the trolley as and when required by the Court for the purpose of identification.

v. The petitioner will be required to give undertaking before this Court on the line that he will abide by the aforesaid conditions, within ten days from the date of this order, failing which the police will be at liberty to take back the possession of the said vehicles.

4. In view of the aforesaid, this petition is allowed. Rule made absolute. D.S. permitted.

[AKSHAY H. MEHTA, J.]

* Pansala.